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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 4740-218

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Signature _____

Typed or printed name _____

Application Number	Filed
10/657,446	8 September 2003

First Named Inventor: Gustavsson

Art Unit	Examiner
2617	Tran

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant/inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [x] attorney or agent of record. Registration number 44,958
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

Signature

Michael D. Murphy
Typed or printed name

919-854-1844
Telephone number

30 March 2009
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- [x] *Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of **Gustavsson**, *et al.*	
Serial No.: **10/657,446**	PATENT PENDING
Filed: **September 8, 2003**	Examiner: Mr. Congvan Tran
For: **Method and Apparatus for Call Notification and Delivery to Busy Mobile Station**	Group Art Unit: 2617
Docket No: **4740-218**	Confirmation No.: 1412

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ARGUMENTS IN SUPPORT OF PRE-APPEAL REQUEST FOR REVIEW

Independent claim 1 claims a method of call handling in a wireless communication network. Its explicit limitations include these items:

(1) receiving an incoming voice call for a mobile station that is busy in a packet-switched data call;

(2) sending an incoming call notification to the mobile station via signaling over an existing traffic channel allocated to the data call; and

(3) reconfiguring the existing traffic channel to support the incoming voice call and delivering the incoming voice call to the mobile station via the reconfigured existing traffic channel.

(Numbering and emphasis added.) Among others, paragraphs [0039] and [0045] in the filed application highlight example advantages of reconfiguring a data call traffic channel for delivery of a newly incoming voice call, as compared to tearing down the data call traffic channel and setting up a newly allocated voice call traffic channel.

The Final Office Action (FOA) alleges that U.S. Pat. No. 6,636,506 to Fan anticipates claim 1. At the top of p. 3, the FOA states that Fan at col. 5, lines 17-47 discloses the claimed

limitations of reconfiguring an existing data call traffic channel to supporting an incoming voice call, and delivering the incoming voice call on the reconfigured existing traffic channel. The plain language in this cited portion of Fan demonstrates that it is unrelated to the claim limitations at issue. In fact, the cited portion of Fan describes a first internet telephone 1 sending an incoming call notification packet to a second internet telephone 7 that is busy in another Internet telephone call with a third party. If the user of the second internet telephone 7 desires to respond to the notification, lines 22-26 in col. 5 of Fan explicitly teach that the user of the second internet telephone 7 disconnects from the IP address of the third party and establishes a new TCP/IP link to the first internet telephone 1.

First, these teachings are unrelated to the wireless communication network, mobile station, and (wireless) traffic channels at issue in claim 1. Second, these teachings make clear that Fan disconnects an existing TCP/IP connection between the internet telephone 7 and the third party, in favor of establishing a new TCP/IP connection between the second internet telephone 7 and the first internet telephone 1. As a second point, there is no reconfiguration of a packet-switched data call traffic channel for use in supporting a voice call. As Fan explicitly discloses, and as anyone skilled in Internet telephony knows, all voice data carried on the Internet is packet-switched data. Third, Fan does not teach reconfiguring an existing traffic channel (of any type). The very section of Fan cited by the Patent Office as supporting of the anticipation rejections, discloses disconnecting the existing TCP/IP connection of the second internet telephone 7 and establishing a new TCP/IP connection for that phone.

Further, Fan does not support the Patent Office's assertion that Fan teaches "receiving an incoming voice call for a mobile station that is busy in a packet data call," and "sending an incoming call notification to the mobile station via signaling over an existing traffic channel," within the meaning of claim 1. In claiming that Fan anticipates such limitations, the Patent Office cites "packet data call 5" of Fig. 1 in Fan, along with col. 3, lines 38-46, col. 4, line 58 – col. 5,

line 10. There is no "packet data call 5" in Fig. 1. Fan uses "5" as a reference designator for the whole Internet, and not as a data call label.

Besides, all telephone calls placed from the internet telephones 1 and 7 in Fig. 1 are packet data calls, insofar as their carriage on the Internet is concerned. PSTN 2 in Fig. 1 may translate IP data packets as needed for calls between internet telephones 1 or 7 and non-internet telephone 3, but that process does not implicate the explicitly claimed limitations of receiving an incoming voice call notification and sending an incoming call notification via signaling over the existing traffic channel of a mobile station busy in a packet data call. See col. 4, lines 7-14, which teach standard call operations between non-internet and internet telephones; see col. 4, lines 18-42, which explain that two internet telephones 1 and 7 may call each other through the PSTN 2, but that connection is simply for the exchange of IP addresses, etc., and that both phones then "hang up" their PSTN connection and establish a new TCP/IP connection through the Internet.

Independent claims 10, 17and 27 (from the mobile station's perspective) are directed to substantially similar subject matter, and Fan correspondingly fails to establish a *prima facie* case of anticipation against these remaining independent claims. For example, claim 10 is directed to a method of call handling in a wireless communication network. Among its limitations, it stipulates: (1) receiving an incoming voice call indication at a Base Station (BS) that is targeted to a mobile station busy in a packet-switched data call, and (2) sending a call notification message to the mobile station and, responsive to receiving a return acknowledgment from the mobile station, reconfiguring the service connection of the mobile station to deliver the incoming voice call using the existing traffic channel. Thus, as with claim 1, the traffic data channel being used to support a mobile station's packet-switched data call is reconfigured to deliver an incoming voice call to the mobile station.

Fan does mention mobile telephone wireless connections at lines 44-45 in col. 3, but the mention is in passing, simply alluding to the fact that Fan's PSTN could be Plain Old Telephone

Service (POTS), Integrated Services Digital Network (ISDN), cellular, PCS, GSM, etc. This generalized statement teaches or suggests nothing about the explicitly claimed traffic channel reconfiguration/reuse at issue in the claims, nor does any other section of Fan. Note that Fan also mentions GSM again in col. 8, but that mention is just an example of using a GSM codec in an Internet telephone, for digital voice processing.

Given the fact that Fan is utterly silent about reconfiguring a wireless traffic channel from data call use to voice call use, and given the fact that those sections of Fan relating to busy conditions for internet telephones explicitly teach disconnecting an existing TCP/IP connection and establishing a new TCP/IP connection, Applicant respectfully submits that none of the independent claims are anticipated by Fan.

Additionally, the dependent claims rejected as anticipated by Fan add further limitations not taught by Fan. For example, claim 8 depends directly from claim 1 and stipulates that "...reconfiguring the existing traffic channel for use delivering the incoming voice call to the mobile station comprises establishing a new service option connection at a network Base Station (BS), and requesting a network Mobile Switching Center (MSC) to establish a voice connection for the incoming voice call." The Patent Office states that Fan teaches these limitations at col. 3, lines 38-46, and at col. 5, lines 17-47. Neither cited portion of Fan mentions or even alludes to base stations or mobile switching centers—these terms or their equivalents do not appear to be found anywhere within the disclosure of Fan. Further, a quick read of the cited sections makes clear that their subject matter is unrelated to the claim limitations at issue.

Broadly, Applicant respectfully submits that Fan does not support any of the rejection arguments advanced in the FOA of 2/03/2009. That failing is consistent with the pattern established in this case. Only one non-final Office Action has issued in this case (12/19/2006). Applicant's corresponding response made a few amendments, such as amending claims 27 and 29, and argued the errors of the rejection. The next action issued on 6/25/2007, and it was made final, despite abandoning the prior rejections, and making new grounds of rejection.

The examiner kindly withdrew that action and issued another rejection on 10/5/2007. That rejection abandoned the rejections advanced in the prior final rejection, and made new grounds of rejection, based on new art. Surprisingly, this new rejection was also made final.

In the examiner's correspondence of 2/21/2008, the examiner kindly withdrew the finality of the 10/5/2007 office action, and stated that another action would be forthcoming. The examiner then allowed about nine months to pass and issued this latest rejection. Surprisingly, this latest rejection—the one now being appealed—is made final, despite abandoning the last grounds of rejection, and making new rejections.

It is disappointing that the examiner has not given Applicant more opportunities to advance this case on its merits, using normal, non-final office actions. Moreover, it is disappointing that the rejections represent a constantly shifting set of references and arguments. Perhaps even more disappointing is the continuing refusal to enter the claim 27 amendments from 12/5/2007. The examiner says they raise new issues, but they merely incorporated dependent claim 29 into independent claim 27, and added "circuit-switched" as a clarifying modifier to the phrase "voice call."

In any case, Applicant respectfully requests reconsideration of the pending claims.

Respectfully submitted,

COATS & BENNETT, P.L.L.C.

Dated: March 30, 2009

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